IN THE

Supreme Court of the United States

October Term, 1979

No. 79-767

GEORGE D. HIME,

Respondent,

vs.

STATE FARM FIRE & CASUALTY COMPANY,

Petitioner.

BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI

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To the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Respondent George D. Hime hereby opposes the petition for a writ of certiorari to review the opinion of the Minnesota Supreme Court issued on August 17, 1979.

(a) OPINION BELOW

The opinion of the Minnesota Supreme Court is reproduced in Petitioner's Brief.

(b) JURISDICTION

As appears in the petition, other than to point out that *Rush v. Savchuk*, No. 78-952, and *Worldwide Volkswagen Corp. v. Woodson*, No. 78-1078, involving state long-arm jurisdiction, are wholly irrelevant.

(c) CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

Respondent makes the following correction: Minn. Stat. §65B.23 was repealed in 1974 and replaced by Minn. Stat. §65B.43 (subd. 5)(3) which defines "insured" under Minnesota automobile insurance law as including a spouse or other relative residing in the same household as the named insured.

(d) QUESTION PRESENTED

Whether Minnesota has sufficient connection and interest in the subject litigation to constitutionally permit the application of Minnesota choice-of-law rules and Minnesota substantive law.

(e) STATEMENT OF THE CASE

On August 3, 1972, while traveling in Minnesota, Mr. and Mrs. George Hime were involved in an automobile accident with another vehicle owned and driven by a Minnesota resident. Mrs. Hime was seriously injured, and was hospitalized for 32 days in Minnesota. Mrs. Hime commenced an action in Minnesota against both the Minnesota driver and her husband, who requested coverage and tendered his defense to State Farm. Through one of its Minnesota offices State Farm denied coverage and refused the tender of defense on grounds that the policy, issued in Florida, contained a household exclusion clause. State Farm did assert subrogation rights under the policy to any recovery the Himes might obtain against the

Minnesota driver.

The action resulted in a judgment of $38,000 with causal negligence apportioned 60% to George Hime and 40% to the Minnesota driver. George Hime then brought a declaratory judgment action against State Farm seeking coverage for the damages assessed against him.

Personal jurisdiction of the Court over State Farm Insurance Company was undisputed at all times. The trial court held that the household exclusion, although valid in Florida, is not enforceable in Minnesota, since they are prohibited by statute (Minn. Stat. §65B.23) and since interspousal immunity has been abolished. *Beaudette v. Frana*, 285 Minn. 366, 173 N.W.2d 416 (1969). The Minnesota Supreme Court affirmed, after carefully evaluating Minnesota's connection and interests in the case, the applicable choice-of-law rules, and the substantive law.

Petitioner now seeks a Writ of Certiorari, based on its claim that Minnesota lacked sufficient contact with the case to constitutionally permit the application of Minnesota choice-of-law rules and forum law on household exclusions.

(f) REASONS FOR REFUSING THE WRIT

The decision below is wholly consistent with the controlling decisions of this Court and presents no novel or unsettled legal issue. Respondent's position rests on two simple and supportable premises:

(1) That the sum effect of this Court's decisions in this area is to require that the forum state have a substantial interest in and connection with the subject matter and parties to the litigation as a minimal threshhold requirement to any constitutionally permissible application of forum law in a true conflict situation.

(2) In the case at bar, the occurrence of a tort within the

forum state is a significant legal event in which Minnesota has sufficient interest and contact to satisfy the threshhold requirements of the due process clause, such that the decision below was a constitutionally permissable exercise of Minnesota choice of law rules and substantive law.

The constitutional limitations on state power to apply forum law over foreign law in conflict situations where nonresidents are involved in a local motor vehicle accident is an area which has caused minimal difficulty for courts, legislators or commentators.[1] The choice of law methods are themselves in a state of flux, but rarely is the constitutional power of a forum state to apply its own law disputed where that state has a substantial connection with the subject matter and parties involved. There is no question that the Court has set limits, but the case at bar falls well within them.

This Court's opinion in *Home Ins. Co. v. Dick*, 281 U.S.397 (1930) remains the basic decision regarding constitutional limits on choice of law. There Dick, the assignee of a policy issued in Mexico and limited to losses in Mexican waters, sued in Texas on a loss which had occurred in Mexico while Dick had resided in Mexico. The claim was brought after the policy's one-year limitation had run, a limitation valid in Mexico but invalid in Texas. This Court held the total lack of connection to the forum state rendered the application of Texas law constitutionally impermissible under the due process clause. "It (Texas) may not validly affect contracts which are neither made

[1]Of course there is considerable comment on the comparative wisdom of the various choice-of-law methodologies employed by the states. See, *e.g.*, Carpenter, *New Trends in Conflicts Rules Affecting Torts: A Chronological Review*, 1 Loy. U L J 187-233 (1970).

nor are to be performed in Texas." *Dick, Supra*, at 410. The *Dick* case set a valid "outer limit" rule limiting the permissibly applicable substantive law to that of states having a substantial connection with the facts and issues of the case.

In *Hartford Acc. & Indem. Co. v. Delta & Pine Land Co.*, 292 U.S. 314 (1934), the Court temporarily went beyond the "outer limits" established in *Dick*, reversing the refusal of a MIssissippi court to enforce a 15-month time limit on claims under a fidelity bond, a limitation valid in Tennessee where the bond had been issued, but invalid in Mississippi where the loss had occurred.

The *Delta & Pine Land Co* case has been characterized as a temporary "aberration,"[2] in light of subsequent decisions. *John Hancock Mutual Life Insurance Co. v. Yates*, 299 U.S. 178 (1936) fit very closely the "outer limit" rule attributed to *Home Ins. Co. v. Dick*. There, material false representations has been made in obtaining a life insurance policy issued in New York with a New York beneficiary. The representation made the policy void under New York law, but suit was brought in Georgia, the after-acquired residence of the beneficiary. This Court held that Georgia could not constitutionally apply its law because it had no substantial connection whatever with the substantive transaction sued on. Not only had the contract been made in New York, but the misrepresentations, which were the subject of litigation, had also been made there.

The basic rule was clarified in *Watson v. Employers Liability Assurance Corp.*, 348 U.S. 66 (1954). There, a product liability insurance contract, delivered in Massachusetts, contained a clause prohibiting direct actions against the carrier until and

[2]Leflar, *American Conflicts Law* (3d Ed. 1977).

after final determination of the insured's obligation to pay damages. Plaintiff, a Louisiana resident, was injured by a product manufactured by an Illinois subsidiary of the Massachusetts insured and brought suit under Louisiana's direct action statute. The direct action exclusion was valid under Illinois and Massachusetts law. This Court held that application of the Louisiana statute did not violate due process because the forum state had a legitimate interest in "safe guarding the rights of persons injured there." *Id.* at 73. The Court did not make any distinction between residents and non-residents in deciding the constitutional issue.

> "Louisiana's direct action statute is not a mere intermeddling in affairs beyond her boundaries which are not concern of hers. Persons injured or billed in Louisiana are most likely to be Louisiana residents and even if not, Louisiana may have to care for them. Serious injuries may require treatment in Louisiana homes or hospitals by Louisiana doctors. The injured may be destitute. They may be compelled to call upon friends, relatives, or the public for help."

Id. at 72.

Synthesizing the Court's opinions, Professor Leflar wrote:

> "The *Dick*, *Yates* and *Watson* cases, taken together, suggest a constitutional rule that is fairly simple even though difficult to apply in practice. A frequent statement of it is that a state may apply its own (or any other state's) substantive law to govern a particular transaction if, but only if, significant factual elements in the transaction are connected with the state whose law is to be applied."

Leflar, *"Constitutional Limits on Free Choice of Law,"* 28 *Law & Contemporary Problems*, 706, 702 (1963).

The *Watson* holding was further strengthened by the later decision in *Clay v. Sun Insurance Office, Ltd.*, 377 U.S. 179 (1964). There a Florida resident brought suit in Florida on an insurance policy which had been purchased while the insured lived in Illinois. The loss occurred in Florida. The policy contained a twelve-month suit clause valid in Illinois but void in Florida. This Court held that application of Florida law was wholly consistent with the requirement of both the Due Process and Full Faith and Credit clauses of the constitution. The Court found no conflict with *Dick*, or *Delta & Pine Land Co.*, relying heavily on *Watson* and on *Pacific Employer Ins. Co. v. Industrial Accident Commission*, 306 U.S. 493 (1939).[4]

The holding in the case at bar is fully consistent with the facts and principles in the foregoing decisions. Like Louisiana in *Watson*, Minnesota has a legitimate interest in protecting the recovery rights of persons injured there. Mrs. Hime, for example, was hospitalized 32 days in Minnesota and required medical treatment from a number of Minnesota doctors. A Minnesota driver was involved who could have been held liable for the full judgment without recourse for contribution against the Florida driver who was primarily responsible for the Minnesota accident. The policy was written to be performed anywhere loss or claim occurred within the United States. The primary performance to date has been in Minnesota–where State Farm has

[4] *Pacific Employers* is a workmen's compensation case where the Court held that nothing in either the Due Process or Full Faith and Credit clauses precluded California from applying its own law where the injured employee was regularly employed by the insured company at its home office in Massachusetts, was in California on a temporary assignment, and was at all time subject to direction and control from the home office.

paid some no-fault benefits and has claimed subrogation rights for same.

The policy was written to cover accident losses in any state, including Minnesota. Minnesota has a significant interest in regulating insurance policies on vehicles involved in accidents in the state, such that coverage is available to satisfy claims and judgments validly obtained in her courts. State Farm Fire and Casualty Company is licensed and carries on substantial business in the Minnesota insurance market.

While the facts fully demonstrate contacts and interests of the forum state sufficient to stand comparison with any of the Court's decisions, no detailed "stacking" of factors or comparisons is necessary. It is sufficient that Minnesota has a substantial connection with the facts and issues of the litigated case. The fact that the Himes were not residents is not determinative. *Watson* made clear that a state's interest in tort recoveries for persons injured within its boundaries is the same both as to residents and non-residents.

Petitioner suggests a "fairness" argument, asserting that such coverage was not contemplated nor charged for by premium. No such evidence was presented to the trial court. In any case, this type of argument has been rejected by the Court. In *Clay*, the Court quoted with approval from Justice Black's dissent in the previous hearing of the same case:

> "Insurance companies, like other contractors, do not confine their contractual activities and obligations within state boundaries. They sell to customers who are promised protection in states far away from the place where the contract is made."

Clay v. Sun Insurance Office, Ltd., 363 U.S. at 221 (1960).

In *Clay* Justice Black pointed out what is intuitively obvious–that the carriers know their insureds may be sued in

other states, and that the courts of those states will feel bound by their own law. *Clay, supra*, at 221. Insurance companies are never "unfairly surprised" by being held to liability for automobile accidents under the law of a particular state. See, R. Weintraub, *Commentary on the Conflict of Laws*, 206 (1971). Petitioner might have stipulated Florida law as controlling in the contract, but this would preclude it from the benefit of defenses in other states unavailable in Florida, such as guest statutes, absolute contributory negligence, and the like.

Petitioner correctly notes that two states have, on similar facts, arrived at conclusions opposite to that reached by the Minnesota Supreme Court. (Pet. Brief at 13). However, other states have reached the same result as the Minnesota Court.[5] It must be emphasized that all of these state courts reached their decisions on the basis of their respective choice-of-law methodologies. None were decided on constitutional grounds, and none of those courts, faced with a motor vehicle accident in their state, felt constitutionally compelled to apply foreign law.

There is no claim that the Minnesota court used incorrect or unconstitutional legal principles. Indeed, Petitioner appears to reject any concept of basic constitutional principles, preferring instead to urge review of choice-of-law questions on a case-by-case method, based only on their congruency with fact patterns in three cases which Petitioner has arbitrarily designated as "most frequently cited." The "substantial connection" rule has proved workable to both courts and legislators,[6] and Petitioner

[5] *Bray v. Cox*, 39 App. Div. 2d 299, 333 N.Y.S.2d 783 (1972); *Hurtado v. Superior Court*, 11 Cal.3d 574, 522 P. 2d 666, 114 Cal. Rptr. 106 (1974); Arnett v. Thompson, 433 S.W.2d 109 (Ky. 1968); *Griggs v. Riley*, 489 S.W.2d 469 (Mo. Ct. Appl. 1972).

[6] See, Leflar, *Choice-of-Law Statutes*, 44 *Tenn. L. Rev.*, 951, 953 (1977).

has offered no substantial reason to create uncertainty in a settled area of the law. Accepting Petitioner's position would inevitably inject an unnecessary constitutional issue into the thousands of otherwise routine non-resident motor vehicle collision claims now processed in the state courts.

(g) CONCLUSION

The application of Minnesota law in the case at bar was well within the constituional limits set by this Court, and the Petition should be denied.

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